

CALLAHAN & BLAINE
A PROFESSIONAL LAW CORPORATION
3 HUTTON CENTRE DRIVE, NINTH FLOOR
SANTA ANA, CALIFORNIA 92707
TELEPHONE: (714) 241-4444
WWW.CALLAHAN-LAW.COM

CALLAHAN & BLAINE, APLC

David J. Darnell (SBN 210166)

ddarnell@callahan-law.com

Gaurav K. Reddy (SBN 259496)

greddy@callahan-law.com

3 Hutton Centre Drive, Ninth Floor

Santa Ana, California 92707

Telephone: (714) 241-4444

Facsimile: (714) 241-4445

Attorneys for Plaintiffs Ross Cornell and
Bryan Estrada

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Ross Cornell, an individual, and Bryan
Estrada, an individual;

Plaintiffs,

v.

Office of the District Attorney, County
of Riverside, and Does 1-100,
inclusive;

Defendants.

Case No. 5:22-cv-00789 JWH (SHKx)

[Assigned to Hon. John W. Holcomb]

**PLAINTIFFS' RESPONSE TO
DEFENDANT'S OBJECTIONS TO
EVIDENCE SUBMITTED WITH
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

*[Filed concurrently with Reply,
Declarations of Ross Cornell, Bryan
Estrada, Charles Ballard, and David J.
Darnell, and Objections to Defendant's
Evidence]*

Hearing Date: July 8, 2022

Time: 9:00 a.m.

Courtroom: 9D

Action Filed: May 9, 2022

Trial Date: None set

Plaintiffs Ross Cornell and Bryan Estrada (“Plaintiffs”) hereby submit their response to Defendant Office of the District Attorney, County of Riverside’s (“Defendant”) objections to Plaintiffs’ evidence in support of their Motion for Preliminary Injunction.

DECLARATION OF ROSS CORNELL

OBJECTION NO. 1a

PLAINTIFFS’ EVIDENCE:

Paragraph 17, page 4, lines 16-21: “I believe that some defendants and defense counsel have adopted tactics whereby they refuse to engage in good faith settlement negotiations that would result in the remediation of ADA violations. I believe this is due to the Prosecution and the associated press release from the RCDA. I also believe that defendants in other cases that I have pending will pursue similar tactics.”

DEFENDANT’S OBJECTION:

Lack of Foundation, Speculation, Improper Opinion Testimony. Violates *Federal Rules of Evidence* 901, 702(a), 403. Lay opinion testimony must have a proper factual basis on which the opinion is based. perceptions. Lay opinion testimony must “be both (a) based on the witness's first-hand perceptions and (b) rationally derived from those first-hand perceptions.” *United States v. Kaplan*, 490 F.3d 110, 119 (2d Cir. 2007).

PLAINTIFFS’ RESPONSE:

“A lay person may offer testimony in the form of an opinion if it is “(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” *United States v. Lopez*, 762 F.3d 852, 863–64 (9th Cir. 2014)

Mr. Cornell’s beliefs are based upon his personal knowledge or attest to facts that he has personal knowledge of. Mr. Cornell’s beliefs about whether Defendant’s actions have interfered with Plaintiffs’ exercise of ADA rights and the factual reasons for those beliefs are also based on his personal knowledge, and are is not based on scientific,

	technical, or other specialized knowledge. The objection should be overruled.
OBJECTION NO. 1b	
PLAINTIFFS’ EVIDENCE:	Paragraph 18, page 4, lines 22-25: “In other words, because of the Prosecution and related action by the RCDA, my ability to identify and remedy ADA violations through private enforcement actions brought by my clients have been and will continue to be thwarted.”
DEFENDANT’S OBJECTION:	Lack of Foundation, Speculation, Improper Opinion Testimony. Violates <i>Federal Rules of Evidence</i> 901, 702(a), 403. Lay opinion testimony must have a proper factual basis on which the opinion is based. perceptions. Lay opinion testimony must “be both (a) based on the witness's first-hand perceptions and (b) rationally derived from those first-hand perceptions.” <i>United States v. Kaplan</i> , 490 F.3d 110, 119 (2d Cir. 2007).
PLAINTIFFS’ RESPONSE:	<p>“A lay person may offer testimony in the form of an opinion if it is “(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” <i>United States v. Lopez</i>, 762 F.3d 852, 863–64 (9th Cir. 2014)</p> <p>Mr. Cornell’s beliefs are based upon his personal knowledge or attest to facts that he has personal knowledge of. Mr. Cornell’s beliefs about whether Defendant’s actions have interfered with Plaintiffs’ exercise of ADA rights and the factual reasons for those beliefs are also based on his personal knowledge, and are is not based on scientific, technical, or other specialized knowledge. The objection should be overruled.</p>
OBJECTION NO. 1c	
PLAINTIFFS’ EVIDENCE:	Paragraph 18, page 5, lines 3-10: “These cases have also been vetted through a third party investigator, who has verified that ADA violations exist at the properties in

CALLAHAN & BLAINE
 A PROFESSIONAL LAW CORPORATION
 3 HUTTON CENTRE DRIVE, NINTH FLOOR
 SANTA ANA, CALIFORNIA 92707
 TELEPHONE: (714) 241-4444
 WWW.CALLAHAN-LAW.COM

1		relation to Estrada's mobility disability. These cases are
2		ripe and ready to be filed, but they have not been filed
3		because of fear from Estrada and myself that new filings
4		may instigate further reprisal or even another arrest by the
5		RCDA. Accordingly, the Prosecution and the associated
6		actions by the RCDA are creating a situation in which
7	DEFENDANT'S	numerous known ADA violations are being allowed to
8	OBJECTION:	persist at public accommodations in Estrada's community."
9		Lack of Foundation, Speculation, Improper Opinion
10		Testimony. Violates <i>Federal Rules of Evidence</i> 901,
11		702(a), 403. Lay opinion testimony must have a proper
12		factual basis on which the opinion is based. perceptions.
13	PLAINTIFFS'	Lay opinion testimony must "be both (a) based on the
14	RESPONSE:	witness's first-hand perceptions and (b) rationally derived
15		from those first-hand perceptions." <i>United States v.</i>
16		<i>Kaplan</i> , 490 F.3d 110, 119 (2d Cir. 2007).
17		"A lay person may offer testimony in the form of an opinion
18		if it is "(a) rationally based on the witness's perception; (b)
19		helpful to clearly understanding the witness's testimony or
20		to determining a fact in issue; and (c) not based on
21		scientific, technical, or other specialized knowledge within
22		the scope of Rule 702." <i>United States v. Lopez</i> , 762 F.3d
23		852, 863–64 (9th Cir. 2014)
24		Mr. Cornell's beliefs are based upon his personal
25		knowledge or attest to facts that he has personal knowledge
26		of. Mr. Cornell's beliefs about whether Defendant's actions
27		have interfered with Plaintiffs' exercise of ADA rights and
28		the factual reasons for those beliefs are also based on his
		personal knowledge, and are is not based on scientific,
		technical, or other specialized knowledge. The objection
		should be overruled.

DECLARATION OF BRYAN ESTRADA

OBJECTION NO. 2

CALLAHAN & BLAINE
A PROFESSIONAL LAW CORPORATION
3 HUTTON CENTRE DRIVE, NINTH FLOOR
SANTA ANA, CALIFORNIA 92707
TELEPHONE: (714) 241-4444
WWW.CALLAHAN-LAW.COM

**PLAINTIFFS’
EVIDENCE**

Paragraph 12, page 3, lines 2-6: “However, due to my fear that any new filing may instigate further reprisal or even another arrest by the RCDA, I am disinclined to file ADA lawsuits against those businesses or to otherwise enforce my rights under the ADA at this time. As such, these known ADA violations at these businesses and public accommodations will likely continue.”

**DEFENDANT’S
OBJECTION**

Lack of Foundation, Speculation, Improper Opinion Testimony. Violates *Federal Rules of Evidence* 901, 702(a), 403. Lay opinion testimony must have a proper factual basis on which the opinion is based. perceptions. Lay opinion testimony must “be both (a) based on the witness's first-hand perceptions and (b) rationally derived from those first-hand perceptions.” *United States v. Kaplan*, 490 F.3d 110, 119 (2d Cir. 2007).

**PLAINTIFFS’
RESPONSE**

“A lay person may offer testimony in the form of an opinion if it is “(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” *United States v. Lopez*, 762 F.3d 852, 863–64 (9th Cir. 2014)

Mr. Estrada’s beliefs are based upon his personal knowledge or attest to facts that he has personal knowledge of. Mr. Estrada’s beliefs about whether Defendant’s actions have interfered with Plaintiffs’ exercise of ADA rights and the factual reasons for those beliefs are also based on his personal knowledge, and are not based on scientific, technical, or other specialized knowledge. The objection should be overruled.

DECLARATION OF ADELFO CERAME, JR.

OBJECTION NO. 3

**PLAINTIFFS’
EVIDENCE**

Paragraph 8, page 8, lines 11-16: “Due to the prosecution currently pending in Riverside County against Ross Cornell and Bryan Estrada, a fellow disabled person and disability rights advocate, alleging felony charges for the filing of

CALLAHAN & BLAINE
A PROFESSIONAL LAW CORPORATION
3 HUTTON CENTRE DRIVE, NINTH FLOOR
SANTA ANA, CALIFORNIA 92707
TELEPHONE: (714) 241-4444
WWW.CALLAHAN-LAW.COM

1		ADA lawsuits in federal court that seem similar to my ADA
2		cases, and due to my fear and apprehension regarding the
3		risk of prosecution or reprisals for enforcing my rights, I am
4		presently disinclined to file lawsuits under the ADA, and I
5	DEFENDANT'S	have decided that I will not do so at this time."
6	OBJECTION	
7		Lack of Foundation, Speculation, Improper Opinion
8		Testimony. Violates <i>Federal Rules of Evidence</i> 901,
9		702(a), 403. Lay opinion testimony must have a proper
10		factual basis on which the opinion is based. perceptions.
11	PLAINTIFFS'	Lay opinion testimony must "be both (a) based on the
12	RESPONSE	witness's first-hand perceptions and (b) rationally derived
13		from those first-hand perceptions." <i>United States v.</i>
14		<i>Kaplan</i> , 490 F.3d 110, 119 (2d Cir. 2007).
15		
16		"A lay person may offer testimony in the form of an opinion
17		if it is "(a) rationally based on the witness's perception; (b)
18		helpful to clearly understanding the witness's testimony or
19		to determining a fact in issue; and (c) not based on
20		scientific, technical, or other specialized knowledge within
21		the scope of Rule 702." <i>United States v. Lopez</i> , 762 F.3d
22		852, 863–64 (9th Cir. 2014)
23		
24		Mr. Cerame's beliefs are based upon his personal
25		knowledge or attest to facts that he has personal knowledge
26		of. Mr. Cerame's beliefs about whether Defendant's actions
27		have interfered with Plaintiffs' exercise of ADA rights and
28		the factual reasons for those beliefs are also based on his
		personal knowledge, and are not based on scientific,
		technical, or other specialized knowledge. The objection
		should be overruled.

Dated: June 24, 2022

CALLAHAN & BLAINE, APLC

By: /s/ Gaurav K. Reddy

Gaurav K. Reddy

Attorney for Plaintiffs Ross Cornell and
Bryan Estrada